

Floyd W. Bybee, #012651
BYBEE LAW CENTER, PLC
90 S. Kyrene Rd., Ste. 5
Chandler, AZ 85226-4687
Office: (480) 756-8822
Fax: (480) 302-4186
floyd@bybeelaw.com

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

John M. Osborn;

Plaintiff,

v.

Grant & Weber Arizona, Inc.;

Defendant.

No.

COMPLAINT

(Jury Trial Demanded)

I. Preliminary Statement

1. Plaintiff brings this action for damages based upon Defendant's violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et seq.* Plaintiff seeks to recover statutory damages, actual damages, costs and attorney's fees.

II. JURISDICTION

2. Jurisdiction of this Court, over this action and the parties herein, arises under 15 U.S.C. § 1692k(d) (FDCPA), and 28 U.S.C. § 1331. Venue lies

1 in the Phoenix Division of the District of Arizona as Plaintiff's claims
2 arose from acts of the Defendant perpetrated therein.

3 **III. PARTIES**

- 4 3. Plaintiff is a resident of Maricopa County, Arizona.
- 5 4. Plaintiff is a natural person who was obligated to pay a debt which was
6 incurred for personal, family, or household purposes.
- 7 5. Plaintiff is a "consumer" as that term is defined by FDCPA § 1692a(3).
- 8 6. Defendant Grant & Weber Arizona, Inc. is an Arizona corporation.
- 9 7. Grant & Weber is licensed and bonded as a collection agency by the
10 Arizona Department of Financial Affairs, license number 0903319.
- 11 8. Grant & Weber collects or attempts to collect debts owed or asserted to
12 be owed or due another.
- 13 9. Grant & Weber is a "debt collector" as that term is defined by FDCPA §
14 1692a(6).

15 **IV. Factual Allegations**

- 16 10. Due to illness, Plaintiff incurred some medical bills owed to Mercy
17 Gilbert Medical Center which were not covered by insurance.
- 18 11. In or about 2013, and after default, Mercy Gilbert assigned the debt to
19 Grant & Weber to collect.
- 20 12. After some initial correspondence between the parties, on or about April
21 23, 2013, Grant & Weber sent Plaintiff another letter concerning the
22 collection of the Mercy Gilbert debt. (Copy of letter attached hereto as
23 Exhibit A.)
- 24 13. In Exhibit A, Grant & Weber threaten that:
- 25 Since you have chosen to ignore our requests for

1 payment of this obligation, we are considering
2 forwarding this account to our attorney, William
3 Holder, Esq., for whatever efforts he deems
4 appropriate.

5 Should you wish to avoid intervention by our
6 attorney, we will look forward to discussing this
7 matter with your on or before April 30, 2013.

- 8
- 9 14. Grant & Weber sent Exhibit A to Plaintiff intending to threaten him and
10 lead him to believe that legal action was imminent unless the account was
11 paid.
- 12 15. Upon information and belief, at the time it sent Exhibit A, Grant & Weber
13 had not referred the Gilbert Mercy debt to attorney William Holder.
- 14 16. Upon information and belief, at the time it sent Exhibit A, Grant & Weber
15 did not have permission from attorney William Holder to use his name in
16 its correspondence to Plaintiff in the form of Exhibit A.
- 17 17. Upon information and belief, at the time Grant & Weber sent Exhibit A
18 to Plaintiff, attorney William Holder did not know that his name was
19 being utilized by Grant & Weber in its letters in the form of Exhibit A.
- 20 18. Upon information and belief, at the time it sent Exhibit A, Grant & Weber
21 did not have permission from Gilbert Mercy to threaten to take legal
22 action against Plaintiff.
- 23 19. Upon information and belief, at the time it sent Exhibit A, Grant & Weber
24 did not have permission from Gilbert Mercy to take legal action against
25 Plaintiff.
20. Grant & Weber sent Exhibit A to Plaintiff intending to imply that legal
action against Plaintiff was imminent.
21. Grant & Weber sent Exhibit A to Plaintiff intending to threaten legal

- 1 action against Plaintiff.
- 2 22. On or about April 23, 2013, Grant & Weber sent Plaintiff another
- 3 collection letter concerning the Gilbert Mercy debt. (Copy of letter
- 4 attached hereto as Exhibit B.)
- 5 23. Grant & Weber attached an "Agreement" to this letter. (Copy of
- 6 Agreement attached hereto as Exhibit C.)
- 7 24. In the Agreement, Grant & Weber once again threaten "The consideration
- 8 of this Agreement is forbearance of legal action of the assigned claim of
- 9 MERCY GILBERT MEDICAL CENTER,/REF #: F0444349."
- 10 25. Upon information and belief, at the time it sent the Agreement, Grant &
- 11 Weber did not have permission from Gilbert Mercy to threaten to take
- 12 legal action against Plaintiff.
- 13 26. Upon information and belief, at the time it sent the Agreement, Grant &
- 14 Weber did not have permission from Gilbert Mercy to take legal action
- 15 against Plaintiff.
- 16 27. Grant & Weber included the quoted language in the Agreement sent to
- 17 Plaintiff intending to imply that legal action against Plaintiff was
- 18 imminent if the Agreement was not signed.
- 19 28. Grant & Weber included the quoted language in the Agreement sent to
- 20 Plaintiff intending to threaten legal action against Plaintiff.
- 21 29. The Agreement provided that Plaintiff would pay twenty-nine (29)
- 22 monthly payments of \$170.00 each commencing on May 30, 2013, with
- 23 a final payment of \$745.44 due on October 30, 2015..
- 24 30. Plaintiff signed and faxed back the Agreement to Grant & Weber on May
- 25 30, 2013.

1 31. On May 30, 2013, Plaintiff also went to Grant & Weber's website and
2 made the first payment of \$170.00.

3 32. When making the May 30, 2013 payment, Plaintiff provided his debit card
4 information tied to his checking account to Grant & Weber.

5 33. On June 3, 2013, a debit in the amount of \$173.95 was entered in
6 Plaintiff's checking account in favor of Grant & Weber.

7 34. On June 30, 2013, which was a Sunday, Plaintiff went on line to make his
8 agreed upon payment of \$170.00 to Grant & Weber, and learned that his
9 checking account had been overdrawn by a debit taken by Grant & Weber
10 in the amount of \$4,877.95.

11 35. At that time, Plaintiff recalled receiving an email from Grant & Weber
12 earlier, but had not opened it thinking it was simply a reminder to make
13 his June 30, 2013 payment.

14 36. When he opened the Grant & Weber email, it stated:

15 This is to notify you that your recurring payment in
16 the amount of \$4,877.95 will be processed on June 30,
17 2013. This payment will use your previous payment
18 method of your Visa Credit Card. The link below will
take you to a summary of your agreed upon payment
plan.

19 37. Contrary to Grant & Weber's statement in the email, Plaintiff had not set
20 up a recurring payment of \$4,877.95 to be processed on June 30, 2013.

21 38. Plaintiff called Grant & Weber first thing Monday morning and spoke to
22 collector L. Vasquez to inquire as to why Grant & Weber had debited
23 \$4,877.95 from his checking account without his knowledge or
24 permission.

25 39. Vasquez told Plaintiff that Grant & Weber did not make the debit, but that

1 it was Plaintiff's fault as he must have entered the authorization for that
2 amount at the time he made his May 30, 2013 payment.

3 40. Vasquez knew that the Agreement entered into between Plaintiff and
4 Grant & Weber provided for payments of \$170.00 per month.

5 41. Yet, Vasquez told Plaintiff that Grant & Weber would not reverse the
6 debit, nor would it refund any portion of the \$4,877.95.

7 42. As a result and proximate cause of Defendant's actions, Plaintiff has
8 suffered actual damages, including, but not limited to, bank charges, loss
9 of money to pay bills, anxiety, embarrassment, and other emotional
10 distress.

11 **V. Causes of Action**

12 **a. Fair Debt Collection Practices Act**

13 43. Plaintiff repeats, realleges, and incorporates by reference the foregoing
14 paragraphs.

15 44. Defendant's violations of the FDCPA include, but are not necessarily
16 limited to, 15 U.S.C. §§ 1692e, 1692e(5), 1692e(10), 1692f, 1692f(1),
17 1692f(2), and 1692f(4).

18 45. As a direct result and proximate cause of Defendant's actions in violation
19 of the FDCPA, Plaintiff has suffered actual damages.

20 **VI. DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a jury trial on all issues so triable.

22 **VII. PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff requests that judgment be entered against
24 Defendant for:

25 a) Actual damages under the FDCPA;

- b) Statutory damages under the FDCPA;
- c) Costs and reasonable attorney's fees pursuant to the FDCPA; and
- d) Such other relief as may be just and proper.

DATED July 11, 2013 .

s/ Floyd W. Bybee
Floyd W. Bybee, #012651
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90 S. Kyrene Rd., Ste. 5
Chandler, AZ 85226-4687
Office: (480) 756-8822
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Attorney for Plaintiff